

Present were: Anderson (Chair); McDonough (Clerk); Batchelder, Brown & Boness (Members); Bargnesi (Associate Member).

The meeting opened at 7:03 p.m.

Petition No.: 4010

Premises affected: 451 Lowell St

Petitioner: Pisc

Members: Anderson (Chair); McDonough (Clerk); Batchelder & Brown (Members); Bargnesi (Member)

Attorney Mark Johnson represented Mr. Vasile Pisc's request as Party Aggrieved &/or for a variance from 4.2.2 for the continued existence of a shed that does not meet the minimum side yard depth requirement. The property is in the SRC district on map 196, lot 5. Mr. Pisc was present. Johnson explained that the shed was built by virtue of a building permit in Sept. 2010. An enforcement order was issued stating that it was in violation. The Board & Johnson discussed the definition of side yard. Photos were submitted of the shed. Johnson believes it conforms to the bylaw & that the building permit was issued correctly. It is uncertain if plans were submitted with the building permit application. The Building Division received a complaint, requested a plot plan from Mr. Pisc, which was submitted, and then the violation notice was sent to him, thus prompting his filing. The Board also discussed the angled orientation of the house on the lot. David Healey, direct abutter at 449 Lowell St, spoke in opposition due to its size. The plot plan that Pisc submitted depicts the shed 10.6' from the lot line. Johnson submitted a copy of a similar case (Howard v. Gibson) arguing that the hardship exists due to the fact that the owner dealt with the Inspector in good faith & believed that the shed is located in the rear yard due to the house being built at an angle to the frontage. Batchelder made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Boness sat off the remainder of the case. Anderson pointed out that this house, according to the aerial photo submitted tonight, appears to be the only one constructed at an angle, giving the effect that the rear yard is different than the abutters, however that the bylaw's definition of rear yard is clear & he does not feel there are grounds for a variance. Batchelder & McDonough disagreed with Anderson. Brown agreed with Anderson that the rear yard is between the rear lot line and the closest point of the house to the rear lot line, the width of the lot. Anderson allowed a point of order from Johnson & Pisc. Pisc informed the Board that the deck shown on the plot plan was constructed after the shed. Anderson asked Johnson to check the statute to determine if a Party Aggrieved vote requires 4-1 or 3-2 to succeed. The Board tabled the matter until the end of the meeting.

Petition No.: 4011

Premises affected: 33 Westwind Rd

Petitioner: Brady

Members: Anderson (Chair); McDonough (Clerk); Batchelder, Brown & Boness (Members); Bargnesi (Associate Member)

Janine & David Brady represented themselves in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct single story additions & alterations that will not meet the minimum yard depth requirements. The house was built in the 1950's. The Brady's spoke to 7 of 10 abutters, all of whom voiced support. The additions will be constructed on all sides of the house. No one from the public spoke on the matter. McDonough volunteered to sit off the remainder of the case and Brown served as Acting Clerk for the case. Brown noted that the house conformed to zoning at its original construction & is therefore a pre-existing, non-conforming structure. Batchelder made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Brown made a motion to grant a special permit under 3.3.5 for the additions that will not meet the minimum front yard depth requirement, substantially in accordance with the plans submitted on the condition that the front setback is maintained per 4.1.3.2.b on the ground that the house is a lawfully pre-existing, non-conforming structure and the proposed additions are not substantially more detrimental to the neighborhood. Boness seconded the motion. The Board voted (5-0) to approve the special permit with conditions. Bargnesi & Brown will write the decision.

Petition No.: 4010

Premises affected: 451 Lowell St

Petitioner: Pisc

Members: Anderson (Chair); McDonough (Clerk); Batchelder, Brown & Boness (Members); Bargnesi (Associate Member)

The Board then returned to the matter of 451 Lowell ST. (#4010). Johnson cited Ch. 40A, Section 15 which requires a 4-1 vote to overturn a Party Aggrieved. Anderson asked for a motion to review & reverse the Building Inspector's decision & to find that shed does meet the necessary yard depth requirements because it is located in the rear yard. Batchelder made the motion & McDonough seconded it. The Board voted (4-1) (Brown opposed) to overturn the Inspector's decision. McDonough then made a motion to deny the variance as moot. Batchelder seconded the motion & the motion failed by a vote of 3 in favor and 2 opposed, Anderson & Batchelder opposed. Anderson asked for a motion to grant a variance, citing the possibility that the Boards decision to uphold the inspector of Buildings might be appealed. McDonough made a motion to approve the variance from 4.2.2. Batchelder seconded the motion. The motion failed by a vote of 3 in favor and 2 opposed (Brown & Anderson opposed). Batchelder will write the decision.

Brown asked the Board to vote on the variance requested in petition number 4011 & made a motion to deny the variance as moot. Batchelder seconded the motion & the Board voted (5-0) to deny the variance as moot.

Petition No.: 4002

Premises affected: 174 Holt Rd

Petitioner: Marshall

Members: Anderson (Chair); McDonough (Clerk); Batchelder, Boness (Member); Bargnesi (Associate Member)

(Brown recused himself from the case) Present on behalf of the petitioner were William MacLeod, engineer, & Mark Johnson, attorney. The proposal is to construct additions & alterations to the side & rear of the house. Johnson noted that the lot was previously subdivided by zba relief. He submitted the 2010 ZBA decision. MacLeod gave an overview of the plan pointing out the wetlands at the rear of the lot, the removal of a single stall attached garage & the construction of the 2-stall attached garage, decks & rear addition. The proposed side setback would be 12', the only portion of the project requiring zoning relief. MacLeod argued that the hardship is due to the lot being 98' & the wetlands at the rear of the lot. Petitioner's builders, Bill Foster & Steve Cote, spoke about the design & necessity of the addition / garage & how it blends with the neighborhood. Rob Bramhall, an abutter two houses away from the site, spoke in opposition voicing concern over the hardship argument, the lot slope causing potential problems for the abutters and the aesthetics. Gregory Bibler, 173 Holt Rd, & Maureen Young, direct abutter at 178 Holt Rd, voiced concern regarding drainage onto her lot. MacLeod spoke about drainage issues & mitigation, preventing an increase in run-off. They will have to file with the Conservation Commission. Johnson submitted zba decisions for other houses in the area that were granted similar relief. Batchelder made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the hearing. The board then deliberated. The Board discussed the hardship related to the existing location of the structure on the small, narrow lot within the minimum setback and wetlands at the rear. Boness made a motion to deny the variance on the ground that a hardship does not exist. McDonough seconded the motion and the Board voted (4-1) to deny the variance (Batchelder in opposition). Batchelder then made a motion to approve the special permit with the condition that the garage not be constructed any closer than 15' to the side lot line and that the rear addition is in conformance with the plans submitted. McDonough seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Boness will write the decision.

There being no further business of the Board adjourned the meeting at 8:55 p.m.